APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil Action No. 63-1552-F

UNITED STATES OF AMERICA,

Plaintiff,

v.

BLUE CHIP STAMP COMPANY; ALEXANDER'S MARKETS; LUCKY STORES, INC.; MARKET BASKET; PURITY STORES, INC.; RALPHS GROCERY COMPANY; SAFEWAY STORES, INCORPORATED; THRIFTIMART, INC.; THRIFTY DRUG STORES CO., INC.; and VON'S GROCERY CO.,

Defendants.

ORDER DENYING MOTIONS

WHEREAS, on October 28, 1966 the Government and all but two defendants lodged a proposed decree settling the above action as to said parties and the proposed decree was set for argument December 13, 1966; and

WHEREAS, said hearing received wide publicity and numerous parties filed briefs *amici curiae* opposing the proposed decree or made appearances at the argument and argued in opposition to said decree; and

WHEREAS, on December 13, 14 and 15, 1966 argument by all parties and by numerous *amici curiae* was heard by the Court, which thereon determined not to

enter the proposed decree and outlined certain principles to be considered in any decree settling the case; and

WHEREAS, on April 28, 1967 a proposed consent decree was lodged settling the case as to all parties and the matter was set down for argument June 5, 1967, with notice being given all persons shown by the record as having appeared as *amici curiae* in said case; and

WHEREAS, numerous persons filed briefs *amici curiae* in opposition to said proposed consent decree, including Thrifty Shoppers Scrip Co. and Independent California Service Station Operators; and

WHEREAS, on June 5, 1967 numerous persons appeared in opposition and made oral argument in opposition to said proposed decree, including the two persons just named and Raley's, Inc., who at that time presented both written and oral argument, following which said proposed final judgment was duly signed and entered; and

WHEREAS, the persons listed below served the motions indicated relative to said judgment:

(i) On June 15, 1967 the Independent California Service Station Operators served a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure and a motion to vacate said judgment;

(ii) On July 14, 1967 the Independent California Service Station Operators served a motion under Rule 15 (a) of the Federal Rules of Civil Procedure to substitute an amended complaint in

intervention for the complaint in intervention previously served and filed by it;

(iii) On July 7, 1967 Thrifty Shoppers Scrip Co. served a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure and a motion to vacate said judgment; and

(iv) On July 14, 1967 Raley's, Inc. served a motion to intervene under Rule 24 of the Federal Rules of Civil Procedure; and

WHEREAS, notice having been duly given, memoranda of authorities having been submitted by said movants in favor of their motions and by all parties to said judgment in opposition to said motions, and the matter having come on to be heard on July 31, 1967 and oral argument being heard and considered;

IT IS HEREBY ORDERED that all said motions be denied for the following reasons among others:

Said motions were not made upon timely application;

No sufficient interest in the subject matter of said judgment has been established by any of said movants;

All interests of each of said movants are included within these public interests which have been considered and safeguarded by the action of the Government herein;

Each movant has failed to establish any valid reason why said judgment should be altered; and

To grant any said motion would unduly delay and prejudice the rights of the parties hereto.

Dated: August 3, 1967.

/s/ WARREN J. FERGUSON
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 63-1552-F

UNITED STATES OF AMERICA,

Plaintiff,

v.

BLUE CHIP STAMP COMPANY; ALEXANDER'S MARKETS; LUCKY STORES, INC.; MARKET BASKET; PURITY STORES, INC.; RALPHS GROCERY COMPANY; SAFEWAY STORES, INCORPORATED; THRIFTIMART, INC.; THRIFTY DRUG STORES CO., INC.; and VON'S GROCERY CO.,

Defendants

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint in the United States District Court for the Southern District of California, Central Division, on December 26, 1963; each of the defendants having appeared and filed its answer denying the substantive allegations thereof; and the plaintiff and the defendants, by their attorneys, having severally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, without the taking of any evidence, and without this Final Judgment constituting any evidence or admission by any party in respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law

herein and upon the consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I.

This Court has jurisdiction of the subject matter of this action and of the parties consenting hereto. The complaint states claims for relief against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, as amended, entitled "An Act to protect trade and commerce against unlawful restraint and monopolies," commonly known as the Sherman Act.

II.

For the purposes of this Final Judgment:

(A) "Person" shall mean an individual, partnership, firm, association, corporation or other legal or business entity;

(B) "Trading stamp business" shall mean the distribution for compensation, of trading stamps to any person for issuance to its customers, employees or others, and the redemption of said stamps for merchandise or money;

(C) "Trading stamp company" shall mean a person engaged in the trading stamp business;

(D) "Capital Assets" shall mean land, buildings, leasehold improvements, furniture and fixtures, warehouse equipment, delivery equipment and automobiles.

(E) "Southern California" is that part of California south of the line formed by the northern boundaries of San Luis Obispo, Kern and San Bernardino Counties.

(F) "New Blue Chip" shall mean a purchaser of, or any other successor to, Blue Chip's trading stamp business pursuant to Section VI herein or a reorganized company pursuant to Sections V or VII herein.

(G) "Reorganization" shall mean a reconstitution of the stock structure of Blue Chip and shall include the creation of a new company to which the assets and liabilities of Blue Chip are transferred, or into which Blue Chip is consolidated or merged.

III.

The provisions of this Final Judgment applicable to any defendant and any person agreeing to be bound shall also apply to each of its subsidiaries, successors, assigns, officers, directors, and employees, and to all other persons in active concert or participation with such defendant or persons who shall have received actual notice of this Final Judgment by personal service or otherwise, but shall not apply to transactions solely between or among such defendant or person and its officers, directors, employees, parent company, subsidiaries and affiliates, or any of them.

IV.

Each of the retailer defendants is enjoined and restrained from:

(A) Combining or conspiring to restrain trade in, or monopolizing or attempting to monopolize the trading stamp business in the State of California; or carrying out, directly or indirectly, any such combination, conspiracy, attempt to monopolize or monopolization;

(B) Entering into any contract, agreement or understanding with any other user of trading stamps in the same line of business:

(i) To refrain, in the State of California or in particular areas thereof, from using trading stamp services entirely or from using the trading stamp services of any particular person or persons; or

(ii) To limit the rate of issue employed in distributing trading stamps to their respective customers in such state;

(C) Acting jointly with any other user of trading stamp services in the same line of business to organize or acquire a trading stamp company to operate in the State of California except as provided in Sections V, VI or VII hereof.

Provided, that this Section IV shall not apply to a retailer defendant, acting independently: (i) in obtaining or entering into any contract to obtain trading stamp services from any trading stamp company; or (ii) when such defendant is engaged in the trading stamp business (either directly or through a subsidiary or affiliate), in furnishing or entering into any contract to furnish trading stamp services to any person, and provided further that this Section IV shall not apply to the provision of trading stamp services by any trading stamp company which is not named as a defendant herein.

V.

Blue Chip is ordered and directed to present to the Court, within 60 days following the date of entry of this Final Judgment, a plan for the reorganization of Blue Chip Stamp Company. The plan shall be substantially in

accordance with either of the plans heretofore furnished to plaintiff. Upon approval of the plan by the Court, Blue Chip shall make bona fide and diligent efforts to reorganize the company pursuant to the said plan. If at any time, in plaintiff's judgment, such efforts are not being made, plaintiff may apply to the Court for an order directing that this Section V shall no longer apply. In the event that such order issues, Blue Chip shall be required to divest pursuant to Section VI or to reorganize pursuant to Section VII hereof.

VI.

(A) In the event that Section V becomes inapplicable Blue Chip is ordered and directed to divest, with all due diligence, within 15 months from the date upon which Section V shall no longer apply, all of the company's capital assets, goodwill, and the right to the service mark and to the use of the name "Blue Chip," and, following such divestiture, to discontinue issuance of trading stamps, cease doing business as an operating company and thereafter to wind up its affairs and dissolve consistent with the applicable laws of the State of California. The divestiture shall be made upon the following terms and conditions:

(1) The purchaser or successor to Blue Chip's trading stamp business shall agree to enter its appearance in this proceeding and shall furnish its written consent to be bound by the applicable provisions of this Final Judgment.

(2) The purchaser or successor shall agree to engage in the trading stamp business in California for a reasonable period of time.

(3) The purchaser or successor shall contract with Blue Chip on mutually satisfactory terms for the redemption of all outstanding trading stamps theretofore issued by Blue Chip and said contract shall insure discharge of Blue Chip's redemption obligations and shall require the purchaser or successor to redeem its stamps interchangeably with the trading stamps theretofore issued by Blue Chip.

(4) The purchaser or successor shall assume such other obligations as Blue Chip and it may agree and Blue Chip shall transfer such cash, securities or other assets as it and Blue Chip may agree.

The said divestiture may be made by a sale of assets, a sale of stock of a corporation which controls the assets, or in any other manner not otherwise inconsistent with the terms of this decree. Provided, that in the event that all of the stockholders of Blue Chip dispose of their stock to a purchaser or successor said disposal shall be regarded as a divestiture by Blue Chip for the purposes of this Final Judgment.

(B) Blue Chip shall make known the availability of the assets for sale. Blue Chip shall furnish to bona fide prospective purchasers making inquiry to it, such information as is reasonably necessary for them to proceed with negotiations looking toward the ultimate acquisition of the assets to be divested and shall furnish plaintiff concurrently with the name of any such prospective purchaser. Blue Chip shall render quarterly reports to the Assistant Attorney General in charge of the Antitrust Division concerning its efforts to effectuate the divestiture

required, the first such report to be rendered within 30 days of the date that Section V shall no longer apply.

(C) At least 30 days in advance of the closing date specified in any contract for sale, Blue Chip shall supply plaintiff with the name of the proposed purchaser, the purchase contract, and with such other information in its possession as is material to the proposed sale. If plaintiff requests, the said closing date shall be extended to the extent necessary to afford plaintiff 60 days between the date of the receipt of the said information and the closing date. Blue Chip may close any sale unless plaintiff serves upon Blue Chip, at least 15 days in advance of the closing date, written notice that plaintiff objects thereto. If plaintiff serves such written notice with respect to a sale to a purchaser engaged in the trading stamp business, or a purchaser engaged in the operation of retail food stores in the State of California, such sale shall not be closed. If plaintiff serves such written notice with respect to any other sale, the sale shall not be closed unless approved by the Court. The time period set forth in Section VI(A) above shall be tolled during the pendency of any extension or of any proceeding under this Section VI(C).

(D) The divestiture ordered and directed by Section VI(A) of this Final Judgment shall be made in good faith and shall be absolute and unqualified except as follows:

(1) Nothing herein contained shall be deemed to prohibit Blue Chip from retaining, accepting and enforcing a bona fide lien, mortgage, deed of trust or any other form of security reasonably necessary to secure full payment of the price at which the

divested property is disposed of or sold or to secure any other obligation of a purchaser or successor, provided that if Blue Chip shall regain ownership of or control over the property divested as a result of any lien, mortgage, deed of trust, or other undertaking Blue Chip shall be required to terminate such ownership or control within 18 months thereafter.

(2) In the event that Blue Chip receives, as a result of any divestiture hereunder, stock of a corporation which controls the divested assets:

(a) Blue Chip shall be required: (i) to dispose of any amount of such stock in excess of 10% of the outstanding common stock of such corporation within one year following the date of receipt thereof or within 22 months following the date Section V shall no longer apply, whichever is earlier, provided that in no event shall such disposal be required within less than three months following the date of receipt of such excess; and (ii) to dispose of the balance of such stock no later than the date of final distribution in liquidation; and (iii) pending disposal, to cause any voting rights of such stock to be exercised by a financial institution or other third party who is acceptable to plaintiff or approved by the Court; and

(b) In the event Blue Chip distributes such stock to its shareholders, no distribution shall be made pursuant to which any Blue Chip shareholder will retain more than 1% of the outstanding common stock of the said corporation

unless the plan of distribution is acceptable to plaintiff or approved by the Court.

VII.

In the event that Section V becomes inapplicable, Blue Chip may also enter into a reorganization pursuant to a plan for the reorganization of Blue Chip Stamp Company acceptable to the Court. The plan shall be substantially in accordance with either of the plans heretofore furnished to plaintiff or in accordance with any other plan acceptable to Blue Chip and to plaintiff.

VIII.

(A) Blue Chip is ordered and directed to continue its trading stamp business and to continue to promote its trading stamp service until completion of the reorganization set forth in Sections V and VII above or until the divestiture set forth in Section VI above. Until such reorganization or divestiture Blue Chip is enjoined and restrained from:

(1) Refusing to provide a trading stamp service or imposing any limitation on such service to any person because of: (i) the presence in the same locality of any establishment operated by another person using Blue Chip's stamp service; (ii) the rate of issue employed by such person in offering Blue Chip's or any other person's stamps; or (iii) the use by such person of any other trading stamp service;

(2) Coercing or compelling any person: (i) to limit the rate of issue employed in offering Blue

Chip's or any other person's stamps; or (ii) to refrain from using any other trading stamp service.

(B) New Blue Chip, in the event that it is not already a party hereto, shall enter its appearance in this proceeding and give its consent to be bound by the applicable provisions of this Final Judgment. A purchaser of assets pursuant to Section IX hereof shall enter its appearance in this proceeding and give its consent to be bound by the applicable provisions of this Final Judgment. New Blue Chip and such purchaser are enjoined and restrained from:

(1) Refusing to provide a trading stamp service or imposing any limitation on such service to any person because of; (i) the presence in the same locality of any establishment operated by another person using the company's stamp service; (ii) the rate of issue employed by such person in offering the company's or any other person's stamps; or (iii) the use by such person of any other trading stamp service;

(2) Coercing or compelling any person (i) to limit the rate of issue employed in offering the company's or any other person's stamps; or (ii) to refrain from using any other trading stamp service;

(3) Having as an officer or employee any person who, while holding such position, also serves as an officer, director, or employee of any person using trading stamp services; or from having, for a period of ten years following the date of entry of this Final Judgment, as a director, any person who, while holding such position, also serves as an officer,

director or employee of any person who was a Blue Chip stockholder in 1956 or 1957.

(C) Each of the retailer defendants is enjoined and restrained for a period of ten years following the date of entry of this Final Judgment:

(1) From having as an officer, director, or employee any person who, while holding such position, also serves as an officer, director or employee of New Blue Chip; or

(2) From exercising any right which it might acquire to vote for the election of any official of New Blue Chip; *provided* that a retailer defendant may cause such right to be exercised independently by a financial institution or other third party acceptable to plaintiff or approved by the Court.

Each retailer defendant shall be free to utilize or not utilize the trading stamp services of Blue Chip and New Blue Chip and, except as provided in this Section VIII(C), to exercise the same rights and privileges available to every other user of the stamp services of Blue Chip or New Blue Chip.

IX.

New Blue Chip shall, within 30 months after the date of completion of the reorganization under Sections V or VII above or the divestiture under Section VI above present for the approval of the Court a plan which shall include the following terms:

(1) New Blue Chip shall offer for sale one-third of its then existing trading stamp business in the

State of California. The business to be offered for sale shall be located within a contiguous geographic area within Southern California.

(2) A purchaser shall be permitted to acquire the business only upon the condition that it enter its appearance in this proceeding and agree: (i) to be bound by the applicable provisions of Sections VIII(B), IX, X and XI of this Final Judgment and (ii) to engage in the trading stamp business for a reasonable period of time. A purchaser shall have the right, if it so elects, to redeem New Blue Chip trading stamps within the contiguous area for the period of one year following the consummation of the sale. Plaintiff shall have the right to object to a purchaser in the same manner as it may object to a purchaser under Section VI(C) above.

(3) New Blue Chip shall not, during the period of one year following the consummation of the sale: (i) knowingly allow any person operating retail establishments in the contiguous area to issue New Blue Chip stamps to customers of such establishments; or (ii) furnish New Blue Chip stamps to any person with knowledge that the stamps will be issued to customers at any retail establishment in the contiguous area; or (iii) otherwise engage in the trading stamp business in the contiguous area except that, if the purchaser does not elect to redeem New Blue Chip stamps or if the purchaser fails to perform in accordance with his redemption obligations, New Blue Chip shall have the right to redeem its outstanding stamps in said area. Following the said one year

period, New Blue Chip shall offer its trading stamp service in the contiguous area.

X.

For the purpose of securing compliance with this Judgment and for no other purpose:

(A) Any duly authorized representative or representatives of the Department of Justice shall, upon written request by the Attorney General or the Assistant Attorney General in charge of the Antitrust Division and on reasonable notice to any defendant, New Blue Chip, or any purchaser under Section IX hereof, made to its principal office, and subject to any legally recognized privilege, be permitted:

(1) Access during the office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of any person specified in this Section X(A) related to any matters contained in this Judgment;

(2) Subject to the reasonable convenience of, and without restraint or interference from, any person specified in this Section X(A), to interview officers or employees of any such person who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, any defendant, New Blue Chip or a purchaser under Section IX shall submit such additional reports in writing with respect to the matters contained in this Final Judgment as may be requested. Provided that no infor-

mation obtained by the means provided for in this Section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

XI.

Jurisdiction is retained for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for construction, carrying out, modification, termination or enforcement of or compliance with the provisions of this Final Judgment and for the punishment of violations thereof.

Dated: June 5, 1967

/s/ WARREN J. FERGUSON
United States District Judge

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 63-1552-F

UNITED STATES OF AMERICA,

Plaintiff

v.

BLUE CHIP STAMP COMPANY; ALEXANDER'S MARKETS; LUCKY STORES, INC.; MARKET BASKET; PURITY STORES, INC.; RALPHS GROCERY COMPANY; SAFEWAY STORES, INCORPORATED; THRIFTIMART, INC.; THRIFTY DRUG STORES CO., INC.; and VON'S GROCERY CO.,

Defendants

INDEPENDENT CALIFORNIA SERVICE STATION OPERATORS, plaintiffs in the action of TWYMAN, et al. v. BLUE CHIP STAMP COMPANY, et al.,

Petitioners for Intervention

RALEY'S, a corporation,

Petitioner for Intervention

THRIFTY SHOPPERS SCRIP CO.,

Petitioner for Intervention

OPINION DENYING MOTIONS TO INTERVENE AND TO VACATE CONSENT DECREE

On June 5, 1967, the Court approved and signed a consent decree in this antitrust action. Subsequent thereto Petitioners for Intervention filed motions which seek —

(a) to intervene as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure;

(b) to be permitted to intervene under Rule 24(b); and

(c) to vacate the consent decree of June 5, 1967.

At the conclusion of argument on July 31, 1967, the Court orally announced its decision, and by minute order denied the motions. This opinion is written in order to permit a studied examination of the Court's views.

BACKGROUND

On December 26, 1963, the United States filed its complaint alleging that Blue Chip Stamp Company, Thrifty Drug Stores Co., Inc. (the largest pharmacy chain in California) and eight grocery chains (whose 1962 sales constituted 30 percent of all sales of grocery stores in California) had since 1955 engaged in a conspiracy in restraint of trade, and had monopolized the trading stamp business in California, in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§1 and 2). The complaint sought an injunction against continuation of the activities charged and asked that the defendant retailers be enjoined in the future from using Blue Chip stamps.

After the case was filed, the Government and the defendants engaged in detailed negotiations to settle the litigation by consent decree. These negotiations extended over two years in time, and the Government afforded an opportunity to all defendants and to all other parties expressing an interest in the case to be heard. As a result of these negotiations, three separate consent de-

crees were proposed, each of which was lodged with this Court. In order that interested parties might have time to study each proposed decree and to make known their views with respect to it, there was annexed to each decree a stipulation providing that all signatory parties consented to entry of the given decree after 30 days unless the Government withdrew its consent during the 30-day period.

On July 22, 1966, the first proposed decree was lodged with the consent of all parties except defendants Market Basket and Thriftimart. The two non-consenting defendants as well as the State of California, Certified Grocers Association, and California Grocers Association (all non-parties), raised objections to the decree before the 30-day period had expired. The Government then withdrew its consent and the decree was withdrawn.

Following further negotiations, a second decree was drafted and lodged with the Court on October 28, 1966. The annexed stipulation to the decree was signed by the Government and all defendants except Market Basket and Thriftimart. The Government and the consenting defendants filed briefs in support of the decree. The two non-consenting defendants, and the California Grocers Association, Certified Grocers Association, S & H Stamp Company, and the State of California filed briefs in opposition to entry of the decree. On December 13, 14 and 15, 1966, this Court held hearings, and all parties favoring or opposing the decree were given opportunity to be heard. At the conclusion of the hearings, the Court refused to sign the proposed decree and outlined certain requirements it believed essential to any decree settling the case.

On April 28, 1967, a third decree was lodged, consented to by all defendants. The Court ordered notice should be given to all parties previously appearing in the case, including parties *amici curiae*. Argument was set for June 5, 1967. Such notice was given. Briefs in favor of this third proposed decree were filed by the Government, all defendants, and also by the State of California, the California Grocers Association, and Certified Grocers Association, who had been active in opposing the earlier decrees. Briefs *amici curiae* in opposition to the proposed decree were filed by the petitioners herein, by S&H Stamp Company, and by Gold Bond Stamp Company. After a study of the briefs and consideration of the oral arguments, the Court signed and entered the proposed decree on June 5, 1967.

DESCRIPTION OF PETITIONERS

Independent California Service Station Operators are plaintiffs in the case of *Twyman et al. v. Blue Chip Stamp Company et al.*, Civil No. 66-1522-F, now pending before this Court. The complaint therein alleges substantially the same violations as those alleged in the Government complaint (violation of Sections 1 and 2 of the Sherman Act). Likewise, the Government complaint is incorporated in the petition to intervene. The service station operators suing in *Twyman* and seeking to intervene here claim that by virtue of the Blue Chip trading stamp monopoly, a customer demand has been created for trading stamps, so that service station operators must give trading stamps. It is alleged that by being thus forced to give trading stamps and by being forced to obtain said trading stamps from a monopoly, the service

station operators are damaged. Their complaint seeks threefold damages under the provisions of 15 U.S.C. §15.

Thrifty Shoppers Scrip Co. is a stamp company which competes with Blue Chip. It has filed an action in this Court, *Thrifty Shoppers Scrip Co. v. Blue Chip Stamp Co.*, No. 67-596-F, against the same defendants as are here, alleging injury in its efforts to compete in the trading stamp business in California due to the restraints of trade and the monopolization by the defendants. Thrifty seeks threefold damages.

Raley's, Inc., a retail grocery chain, also is the plaintiff in a civil action now pending before this Court. A 2% stockholder of Blue Chip, Raley's is suing on behalf of said company and other stockholders. *Raley's et al. v. Alexander's Markets et al.*, Civil No. 64-660-F. Named as defendants are Blue Chip, the other defendants in the Government suit, and certain individual shareholders of Blue Chip Stamp Company. Raley's complaint alleges violation of Sections 1 and 2 of the Sherman Act, and prays for money damages, for a decree requiring the defendants to sell their stock in Blue Chip Stamp Company, and for an injunction prohibiting the defendant shareholders from participating in future profits of Blue Chip. In 1966 Raley's commenced using Gold Bond stamps. From 1959 to 1966 it had used its own stamps; prior to 1959 it had used Blue Chip.

RULE 24

The applicable Rule is Rule 24, Federal Rules of Civil Procedure:

Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

QUESTIONS PRESENTED

The questions presented are (1) whether petitioners have a right to intervene [Rule 24(a)], or (2) should be permitted to intervene [Rule 24(b)] in an action brought by the Government and subsequently settled, with the consent of the Court after a full hearing, and, (3) whether, ancillary to this, the petitioners have a right to have the consent decree vacated.

THE PETITIONS WERE NOT TIMELY

Rules 24(a) and 24(b) specifically provide for intervention only upon "timely application". The present motions were neither served nor filed until after June 5, 1967, the date the consent decree was entered. Twyman's motion was filed June 19, 1967; Thrifty Shoppers' on July 12, 1967; and Raley's on July 14, 1967. The rule for intervening after entry of a final judgment is set forth in Barron & Holtzoff, Fed. Prac. & Proc., vol. 2, ¶594:

> "Intervention may be allowed after a final judgment or decree if it is necessary to preserve some right which cannot otherwise be protected, but such intervention will not be permitted unless a strong showing is made."

Petitioners have failed to make any showing at all as to any right which can only be protected by intervention. Furthermore, there is no showing that their applications are "timely".

Each petitioner claims it demonstrated its opposition to the decree by filing an *amicus curiae* brief and by arguing in opposition to its entry. However, if petitioners

had time to make known their opposition to the decree, they had time to file their applications to intervene.

In *United States v. Wilhelm Reich Foundation*, 17 F.R.D. 96 (D. Maine 1954), *aff'd*, 221 F.2d 957, *cert. denied*, 350 U.S. 842, the Court stated:

> "Although the determination of timeliness involves a consideration of a number of factors and the time element alone is not controlling, a strong showing must be made by the applicants in order to be allowed to intervene after the entry of a final judgment. See 4 Moore's Federal Practice, 2d Ed., Par. 24.13." 17 F.R.D. at 102.

In *Slusarski v. United States Lines Co.*, 28 F.R.D. 388, 390 (E.D. Pa. 1961), the Court stated: "Where, as here, all issues have been resolved and the litigation concluded, with entry of judgment, we think the application is clearly too late." For similar rulings see *Alleghany Corp. v. Kirby*, 344 F.2d 571 (2d Cir. 1965), appeal dismissed — *cert.* improvidently granted, 384 U.S. 28; *Kaplan v. Guardian Life Ins. Co. of Amer.*, 231 F.Supp. 874, 876-77 (W.D. Mo. 1964); *Union Nat. Bank of Youngstown, Ohio v. Superior Steel Corp.*, 9 F.R.D. 124 (W.D. Pa. 1949).

Rule 24 fails to provide any standard by which timeliness may be tested. Thus, it is necessary to look to all the circumstances in a given case. However, the courts do not look with favor upon one who, fully aware of what has transpired, nonetheless fails to act on his rights and is unreasonably tardy in filing a petition for intervention. Thus, it has been stated:

". . . we might say we do not see any reason why these interveners could not have sought intervention much earlier. The Court should also consider the state of the cause. That is, as we have pointed out, the case has been concluded; a decree entered; and the parties have reached an amicable settlement and dismissed their appeal. The applicants for intervention here have in effect slept on their rights, and now they want this Court in effect to administer the motion picture industry in the distribution of motion pictures in Western Pennsylvania. We do not feel that this is a function of a district court." *Basle Theatres, Inc. v. Warner Bros. Pictures Distributing Corp.*, 24 F.R.D. 476, 477 (W.D. Pa. 1959).

The requirement of timeliness is not without foundation. The interest in expeditious administration of justice does not permit litigation interminably protracted through continuous reopening. A motion to intervene after entry of the decree should therefore be denied in other than the most unusual circumstances. Such circumstances are not present here. Petitioners have for some time been aware of the existence and nature of the negotiations leading to the final decree entered by this Court. They have been given every opportunity to be heard. Had they felt their interests were not being given adequate consideration, they should have moved to intervene. They chose not to do so, but rather waited until lengthy and complex negotiations had been completed, all arguments of *amici* in opposition to the three proposed decrees had been heard, and a consent judgment entered, before ultimately seeking to intervene.

Petitioners cite *Kozak v. Wells*, 278 F.2d 104 (8th Cir. 1960), as purported authority for the proposition that intervention is proper after entry of a consent judgment. However, *Kozak* is not applicable here. In that case the motion to intervene came *prior* to entry of the decree and before the issues had been drawn. The opinion did note, however, that "There are even occasions where intervention is proper after judgment." But such cases have typically involved a refusal or unwillingness by the losing party to diligently prosecute the lawsuit, this fact not becoming apparent until after the Court's decision. *E.g., Hurd v. Ill. Bell Tel. Co.*, 234 F.2d 942, 944 (7th Cir. 1956) (intervention granted at appellate level where in a spurious class action it appeared that certain members of the class doubted the faithfulness of the named plaintiff in prosecuting the appeal on behalf of the class); *Pellegrino v. Nesbit*, 203 F.2d 463 (9th Cir. 1953) (intervention granted for purposes of prosecuting appeal by a stockholder who learned after judgment had been entered against the corporation, that the corporation had decided not to appeal, despite the fact that the corporation's suit against its officers to recover allegedly improper profits had been instigated at the request of this stockholder); *Wolpe v. Poretsky*, 144 F.2d 505 (D.C. Cir. 1944), *cert. denied*, 323 U.S. 777 (intervention granted for purposes of prosecuting appeal because affected property owners did not learn until after judgment that the zoning commission did not intend to appeal an adverse judgment). Under circumstances such as these, where the inadequate representation of the petitioner's interest comes to light only after entry of the decree, the courts have been willing, with good reason, to recognize an exception to the general rule forbidding

intervention after entry of the decree. This exception has been narrowly defined: "Intervention may be allowed after a final decree where it is necessary to preserve some right which cannot otherwise be protected." *Wolpe v. Poretsky, supra,* 144 F.2d at 508.

Referring again to *Kozak, supra,* the motion to intervene therein, as noted above, was filed before entry of final judgment. Thus, *Kozak* is not authority excusing petitioners here from the necessity of making a "strong showing" as to why they did not proceed more diligently. The delay in serving and filing the motions cannot be overlooked when considered in light of the injury sure to result to the public should implementation of the decree be postponed.

Petitioners contend they meet the requirement of timeliness since the *El Paso* case [*Cascade Natural Gas Corp. v. El Paso Natural Gas Co.,* 386 U.S. 129 (1967)] holds that even after entry of the consent judgment, intervention may be permitted. Whether or not this is in fact the holding in *El Paso,* it is clear that that case does not rewrite Rule 24(a) and (b) to eliminate the requirement of timeliness. After the Supreme Court ordered divestiture, *United States v. El Paso Natural Gas Co.,* 376 U.S. 651 (1964), the District Court held hearings on the form of relief. Twenty parties, including the State of California and Cascade Natural Gas Corp., filed motions to intervene. These motions were filed and denied *before* the District Court entered its consent decree. Thus, in the opinion whereby intervention was denied, the District Court stated, "All that remains is to fashion a divestiture decree which complies

with the mandate of the Supreme Court." *U.S. v. El Paso Natural Gas Co.*, 37 F.R.D. 330, 332 (D. Utah 1965). Of the 20 prospective intervenors, California, and Cascade Natural Gas Corp., appealed to the Supreme Court, along with Southern California Edison Co., which had petitioned to intervene at a later date. The Supreme Court reversed, permitting intervention. The Court's opinion, per Mr. Justice Douglas, does not even discuss timeliness.

As noted above, California, and Cascade Natural Gas Corp. both sought intervention well in advance of entry of the consent decree. It is not clear when the petition of Southern California Edison Co. was filed. However, on these facts, and in view of the fact that the Supreme Court did not discuss timeliness or the dates the petitions were filed, it is clear that *El Paso* cannot be taken as authority for the proposition that intervention may be permitted after entry of a consent decree.

In *El Paso*, the Supreme Court observed that it had a right to protect and to insure obedience to its own previous mandate. Similarly, this Court likewise has broad powers to protect and interpret decrees which it has approved and issued. Obviously, a ruling by a court that intervention is proper to insure compliance with its earlier mandate is no authority for asserting that a court, which has issued a mandate, should permit intervention for the purpose of attacking the mandate. In this respect, *El Paso* is actually authority for the denial of the instant motions to intervene, because the present Court has power to interpret and enforce the mandate which it has issued.

This interpretation of *El Paso, supra,* has been sustained in the most recent session of the Supreme Court. The Government had prevailed in an action brought to force Alcoa to divest itself of Cupples. (*United States v. Aluminum Company of America,* 233 F. Supp. 718, 247 F. Supp. 308 (E.D. Mo. 1962), *affirmed per curiam,* 382 U.S. 12.) During the pendency of the action, and subsequent negotiations for divorcement, Alcoa and Cupples bid on a contract to supply aluminum curtain walls for the proposed New York Port Authority building, under an agreement that if Alcoa were forced to divest itself of Cupples, it would relinquish the contract to Cupples. Lupton Manufacturing Co. also bid to supply aluminum curtain walls for the building. When the order of divorcement became final, Lupton moved to intervene under Rule 24(a) and (b). Lupton did not contend that it had a right to bid free from competition, but rather asserted that if Cupples were permitted to retain the contract it would retain part of the profit of an illegal merger, and thereby frustrate the purposes of the Government's case, namely, to restore free and open competition in the aluminum curtain wall industry. The District Court denied Lupton's motion to intervene and a direct appeal was taken to the Supreme Court. *United States v. Aluminum Company of America and Cupples Products Corp.,* 41 F.R.D. 342 (E.D. Mo. 1967), appeal to Supreme Court dismissed, 87 S. Ct. (Adv.) 2112 (June 12, 1967).

PETITIONERS HAVE NO RIGHT TO INTERVENE UNDER RULE 24(a)

Rule 24(a) governs intervention as of right. In addition to the requirement of "timely application", 24 (a) further requires that a prospective intervenor claim —

> ". . . an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect his interest. . . ."

Petitioners have not demonstrated the existence of any "interest relating to the property or transaction" which is the subject of the Government's suit which might support their applications to intervene.

Each petitioner has filed an action, pending in this Court, charging the defendants with substantially the same antitrust violations as those charged in the Government's case. They seek damages for the injuries suffered as a result of these violations. None of their "interests" are in any way "impaired or impeded" by settlement of the Government's case. Nor is their ability to prosecute their respective cases impaired or impeded by the Government's case. The speculation that petitioners may be benefited in the trial of their respective cases if the Government is forced to litigate its case certainly does not give them an "interest" in the Government's case sufficient to support the motions to intervene.

If the petitioners are appearing merely as members of the public, in the public interest, then it is incumbent

upon them to establish that the Government has not acted properly in the public interest. This they have not done. Congress has vested in the Department of Justice the duty of instituting proceedings in equity to prevent and restrain antitrust violations. (15 U.S.C. §4.) Acting on behalf of the public interest in the present matter, the Government first investigated, and then filed its complaint seeking to restrain the violations and to dissipate the monopoly revealed by its investigation. Substantial effort was expended both in preparing the case for trial and in seeking to negotiate the consent decree, here challenged, to attain the two principles for which the case was originally filed. The decree enjoins those trade restraints alleged to be illegal in the complaint, and provides for drastically reducing the power of the defendant retailers over Blue Chip Stamp Company; defendant retailers are enjoined from acting in concert in the trading stamp industry in the future. The monopoly power of Blue Chip is decreased, and competition is opened.

PETITIONERS SHOULD NOT BE PERMITTED TO INTERVENE UNDER RULE 24(b)

Generally speaking, the right to intervene to defeat entry of a consent decree in any government antitrust action has been consistently denied.

In *Sutphen Estates, Inc. v. United States*, 342 U.S. 19 (1951), the facts were that after the decision in *United States v. Paramount Pictures, Inc. et al.*, 334 U.S. 131 (1948), Warner Brothers Pictures Corpora-

tion was ordered reorganized in a manner similar to divestiture. Sutphen Estates had leased property to a Warner affiliate and Warner had guaranteed the lessee's performance of the lease. Intervention was sought by the lessor to protect its rights against Warner as guarantor. Intervention was denied because the lessor was not a privy of Warner and the "reorganization" decree would not bind the lessor in any legal sense. The Court stated that ". . . the claim of injury to appellant is too speculative and too contingent on unknown factors to conclude that there was an abuse of discretion in denying leave to intervene". 342 U.S. at 23.

In *Sam Fox Publishing Co. et al. v. United States*, 366 U.S. 683 (1961), the District Court denied certain music publishers intervention in proceedings for the modification of a prior consent decree in a government antitrust suit. On appeal, the Supreme Court, per Justice Harlan, stated:

> "We regard it as fully settled that a person whose private interests coincide with the public interest in government antitrust litigation is nonetheless not bound by the eventuality of such litigation, and hence may not, as of right, intervene in it. In *United States v. Borden Co.*, 347 U.S. 514, it was ruled that it was an abuse of discretion for the District Court to refuse the Government an injunction against certain acts held violative of the antitrust laws, even though the same acts had already been enjoined in a private suit. It was there stated in clearest terms that 'private and public ac-

tions were designed to be cumulative, not mutually exclusive' (*id.*, at 518). . . ." 366 U.S. at 689.

See also, *United States v. Loew's, Inc. et al.*, 20 F.R.D. 423 (S.D. N.Y. 1957).

In *United States of America v. Radio Corporation of America*, 186 F. Supp. 776 (E.D. Pa. 1960), *appeal dismissed*, 364 U.S. 518, a competitor of the defendant attempted to intervene after a consent decree had been entered, for the purpose of objecting to proposed acquisitions to which the Government did not object. The Court denied intervention, as under the consent decree it had retained jurisdiction only to allow any of the parties to the final judgment — no one else — to apply to the Court for further orders or directions. However, the Court also stated:

> "The Government opposes the motion for intervention and has informed the Court that it has carefully investigated and reviewed all the facts and reached the conclusion that the proposed Boston and San Francisco acquisitions do not violate the decree. In this state of facts, even if I had discretion to allow the intervention, I would not do so. The Government is concerned with the public interest and is satisfied that the conduct which Westinghouse complains of is not against that interest. It would not lead to an orderly administration of justice to allow intervention in this type of antitrust litigation over the objection of the authorized agency of the United States in charge of enforcing a decree which it has obtained. The

movant, if it is aggrieved, must be left to such private remedy as Congress may have provided for it." 186 F. Supp. at 776-777.

This language is particularly significant for the case at bar, where the Government opposes intervention and where the proposed intervenors have already commenced pursuit of private remedies.

PETITIONERS' MOTIONS ARE WITHOUT MERIT

There is no merit to the claims petitioners seek to advance; intervention should thus be denied. In *Marx v. Maddrey*, 106 F. Supp. 535 (E.D. N.C. 1952), petitioner moved to intervene and to set aside an order previously entered. The Court denied intervention on the ground that the arguments raised in opposition to the order were without merit.

Petitioners here do nothing more than reiterate arguments previously presented; they fail to raise any additional arguments not already heard at length and denied by this Court. To permit intervention and vacation of the decree so that these very same arguments can be heard again would impose an unwarranted burden on the parties and the Court.

In support of their contention that their claims should be heard, petitioners cite *United States v. Grinnell*, 384 U.S. 563 (1966), for the proposition that complete destruction of the monopoly power is the standard of relief in monopolization cases. However, the reliance on *Grinnell* is misplaced. Unlike the case at bar, *Grinnell*

was litigated to judgment; there was no consent decree. The authorities do not require complete divestiture where a consent decree, rather than a litigated judgment, is entered. The decree herein is designed to limit the powers of Blue Chip and to open up and increase competition in the stamp industry in California, while at the same time preserving the legitimate interests of the users of Blue Chip stamps. This is consistent with the principles embodied in the antitrust laws.

The consent judgment is indispensable to antitrust enforcement. The Government notes that seventy percent of their antitrust judgments are consent decrees. Such decrees result from negotiation, thus typically may provide something less than the full relief prayed for (and often something more than that which the Government could obtain after trial). Litigation that might proceed for many years is avoided by utilization of this procedure. Its legality is beyond question. In *Sam Fox Publishing Co., supra,* the Supreme Court observed that:

> "Apart from anything else, strong policy would strongly lead us to decline appellant's invitation to assess the wisdom of the Government's judgment in negotiating and accepting the 1960 consent decree, at least in the absence of any claim of bad faith or malfeasance on the part of the Government in so acting." 366 U.S. at 689.

As petitioners have not furnished the Court with anything beyond that which has already been carefully considered and rejected upon ordering entry of the con-

sent decree, there is nothing to be gained and much to be lost by vacating the decree.

Petitioners, when asked by the Court to present in substance a decree which would better serve the public were unable to do so. Their arguments are general and without economic substance. This Court has determined that it is essential that there be a viable non-franchised stamp company which can compete with the strong franchised ones, in order to permit small retail businesses in California to compete with large chain establishments. At the present time there is only one non-franchised stamp company in California, Blue Chip. The decree, among other matters, provides that one-half of Blue Chip's Southern California business must be sold to a purchaser who will operate on a non-franchised basis. This is the most practical way to increase competition in the retail trading stamp business that has been advanced in 3½ years, and petitioners' arguments against the decree are so shallow as to be devoid of merit.

Dated this 18th day of August, 1967.

/s/ WARREN J. FERGUSON
Warren J. Ferguson
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL No. 63-1552-WJF

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BLUE CHIP STAMP COMPANY, *et al.*,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Date: Thursday, December 15, 1966

[Argument.]

THE COURT: . . .

In deciding whether or not to decide to sign the proposed consent decree, I have to take as an established fact the allegations contained in the Complaint, and for the purposes of my discussion this afternoon I will accept as being conclusively proved the allegations of the Government concerning all of the defendants who are before the court.

I think the court has the power to enter a consent decree in the manner proposed, even though there may be two non-consenting defendants.

I think in this case if I were going to sign a decree I would make a finding, without any hesitation whatsoever, that there is no reason for any further delay. I think the matter should be settled promptly and effectively.

It isn't doing the administration of justice any good to continue this much longer. It isn't doing the economy of California any good to continue it any longer. It isn't helpful upon the emotional stability of the defendants to have the case continued any longer, and assuming, like I am assuming, that there is a violation or violations of the Sherman Act, then the matter should be corrected promptly.

It appears that the case, without any question, is a case of unusual quality. The economic ramifications are probably greater within a narrower geographical aspect, however, than any like case that has been presented before, because the case not only concerns a monopoly within the trading stamp industry in California, but whatever is done by this court will have a tremendous impact upon the economy of the State, not only the economy of the S & H and any trading stamp companies that want to come in but upon the entire retail, wholesale and consumer industry.

It is for the rollback provisions mainly that I am refusing to sign the decree. After listening to arguments for three days, after reading the briefs and studying them as well as I could, I am convinced that the rollback provisions would have such an impact upon the economy of the State that I would be performing a terrible injustice.

I do think, however, that there are possible alternatives to the rollback provisions, and I think it is incumbent upon me in any decree I sign, whether it be a consent decree or a decree after a trial — assuming I find there has been after a trial a violation of the Sherman Act as alleged — I must do something to insure, as much as *his*

humanly possible today, of future vigorous competition in the trading stamp industry, without impairing the economy of the State, particularly the grocery business.

In order to do so I have a dual problem. The problem is a complex dual one, and I can appreciate why we have had 16 months or 18 months, whatever it was, in negotiations by eminently qualified people.

I think the Government understands the grocery industry in California. I think they are attuned to the problems which are specific in California, and I don't think that anybody has any right to say — at least by what has been demonstrated to me so far — the Government is not concerned and aware.

The problem then requires two things. One, to establish a viable new company, a viable stamp business in California which will compete with S & H, and also at the same time eliminate the monopoly which Blue Chip presently has today.

In order to accomplish the viability I would recommend a decree which transfers not only to new company the assets, as set forth in the proposed decree, but also the name "Blue Chip".

I think that if the new company is going to be viable — and I will not have it hanging over my conscience if it doesn't prove viable — it is necessary that the name "Blue Chip" be transferred to the new company together with all the assets of Blue Chip. I think this transfer should be made immediately.

Now, I think it is vital and necessary that all of management, all of the employees, particularly management of

Blue Chip go to the new company right away. Of course, this is an individual choice of management, if they want to transfer. But I think the new company should be started immediately. I think Blue Chip should be dissolved immediately, and I think all management of Blue Chip should go to the new company. I think it is vital and imperative that the restraining orders which are contained in the proposed decree be included in any new consent decree.

Now, that is, the provisions concerning the fact that the new company shall — oh, with one exception. I can't conceive of any reason, any economic reason — I guess we are dealing in economics as much as we are dealing in law — that new company should be a non-profit corporation.

I have thought as much as I possibly could as to the reason, economic reason and legal reason, why it should be a non-profit corporation. If it is going to remain viable I think it has to be a competing business organization which remains healthy and enters the profit field.

So I won't sign a decree which says the new company has to be a non-profit one.

Now, I guess probably nobody has too much argument on what I have said so far.

Now we get to the point where we have to do something to make sure that new company opens up, permits an opening up of the stamp market in California, and how do you do that?

I don't think the rollback as proposed will accomplish anything except chaos. I have read the cases in which the

court uses predatory people going out and creating monopolies, all the harsh language that the Supreme Court has used to criticize conduct which creates monopolistic operations, and not only is the rollback provision inoperable, but I think it is too harsh.

Therefore, as an alternative I would propose something like this:

That at the end of a certain number of years, two or three, a sufficient period of time to insure that new company is viable, that new company shall present to the court a plan to sell within a geographical area one-third of its existing business.

The sale, I recognize the difficulties that this will present, but I think that a plan could be worked out by new company within that period of time whereby they will offer to sell to anybody who wants to buy within a specific geographical area one-third of the existing business of the new company, of the then existing business of the new company. The buyer will have to guarantee that they will continue a non-franchise stamp business. They will have to guarantee that they will remain in operation for a reasonable period of time regardless of the business consequences of their act. Then there should probably be a period of a year in which new company agrees it will not compete within the geographical area with the buyer, and then at the end of that year new company then agrees it will compete with the buyer within that geographical area.

It is entirely possible that nobody would ever buy under those terms and conditions, but if they don't buy, as Mr. Spivack has said, that is the problem in the market place.

If they do buy, then I think that the court has done something to open up the market with at least minimal injury to California's economy.

I think the agreement in regard to the repayment of the $1,500,000.00 has to be clarified, that it doesn't have to be paid back within six months, and I think the decree has to be more specific as to the redemption program between Blue Chip and new company, and in accord with the restraining orders as proposed and in accord with the type of enterprise that new company shall engage in, but I would urge that Blue Chip be dissolved forthwith, that new company begin operations forthwith, carry on the trading stamps known as Blue Chip.

Does anybody have any questions?

MR. ALSUP: Your Honor has made a very fine suggestion and we appreciate it.

MR. SPIVACK: Did I understand you suggest that one-third of the total business of Blue Chip be sold?

THE COURT: Within a geographical area, one-third of its total.

MR. SPIVACK: That total should be allocated in one geographical area?

THE COURT: Right.

MR. SPIVACK: In a geographical area which is sufficiently contiguous to an area in which Blue Chip can compete so that it can go in?

THE COURT: Yes.

MR. SPIVACK: As I understand from the geography of California, that would have to be a part of Southern California.

THE COURT: Well, I am throwing that out. I think a plan can be worked out. The details, I think, are going to be too onerous for me to try to decide that, but I think you have my idea, Mr. Spivack, as to how this is to be accomplished.

Is there too much opposition offhand that you can see to this?

MR. SPIVACK: Well, the problem was, your Honor, you remember originally at one time we were going to split it in two, one North and one South.

THE COURT: Well, within a period of three years, probably, I think new company with an entirely new outlook will be able to come up with a program, with this kind of plan, and the plan is going to have to be approved by the court. We are going to have to work out a program in which the offer is made to other companies, and there may have to be a bid procedure whereby sealed bids are taken for so much money, I don't know.

I would urge and recommend also further, however, that in addition that the arbitration program as set forth in the proposed decree be brought not only to include arbitration of that one aspect — I think the arbitration program is limited only to the paragraph which is self-contained — I think all aspects of this thing should be subject to arbitration so that any problems between Blue Chip and new company can be worked out within the business field.

One thing concerned me. I don't know whether or not the court should insist that a certain number of the directors of new company be approved by the Attorney-

General or approved by the Government. I was inclined seriously to consider the advisability of making at least one-third of the directors of new company approved by the Government. I won't insist on this, however, because it may not be necessary, and if it isn't necessary, it is not wise.

Anything else?

MR. LERMAN: Your Honor, did you have or include a suggestion as to who it is that would own the new company to be created?

THE COURT: No. I wish that I could, and I would like to be able to say something about that, and this is a problem that concerns Mr. Howland. It is a problem that concerns me.

I don't think it is going to make any difference. I don't think it is probably going to make any difference. If it is going to make any difference, then the furthest I would go in determining who would own new company would be to insist that the Attorney-General be able to approve at least one-third of the directors of that company. Like I say, I don't know whether it is necessary. If it isn't necessary — and I am talking about necessary and open, in order to open up the monopoly — then it would be unwise. But other than that I am not making any suggestion as to who would own new company.

Mr. Howland?

MR. HOWLAND: I have a question, your Honor. Does what your Honor has to say on the subject of a non-profit corporation, does that also apply to a co-op, a profit-making organization, the emoluments of which went to users?

THE COURT: The proposed decree says that the articles of the new corporation shall either be a non-profit corporation or else as approved by the plaintiff.

MR. HOWLAND: Yes.

THE COURT: Now, nobody has made any comment on the authority vested in the plaintiff by the decree. So if nobody is objecting, I am not making the objection.

There was violent objection by Mr. Lydick concerning the non-profit aspect of it, and I think he is validly justified in his vigorous argument against a non-profit organization.

Gentlemen, the court wishes to comment that your presentations, your demeanor and attitude have been entirely beneficial to the court, and all of you are a compliment to your clients and to the legal profession.

The court will be in recess.

(Whereupon, at 3:30 o'clock p.m., Thursday, December 15, 1966, an adjournment was taken.)

(Tr. Dec. 15, 1966, 401-412.)